No. 06-

In the
SUPREME COURT of the UNITED STATES

JANA PAUGH, Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Virginia

PETITION FOR A WRIT OF CERTIORARI

Stephen Thomas Yelverton
Yelverton Law Firm, P.L.L.C.
601 Pennsylvania Ave., N.W.
Suite 900 South
Washington, D.C. 20004
Tel. 202-329-4200

Counsel for Petitioner

QUESTIONS PRESENTED

(a) Whether summary criminal contempt convictions, where the words and conduct of the defendant were not in the courtroom and not observed by the Judge, are in conflict with precedent of this Court in Johnson v. Mississippi, 403 U.S. 212, 215 (1971), which requires that convictions for summary contempt can be only for words and conduct in the courtroom and observed by the Judge, and therefore the convictions must be overturned?

(b) Whether Section 18.2-456 (2) of the Virginia Code as to summary contempt, which does not define the elements of a "threat of violence," is impermissibly vague and overly broad in scope in violation of the 14th Amendment, and therefore the convictions must be overturned?

PARTIES

The parties to the proceeding are set forth in the caption.

TABLE OF CONTENTS

Questions Presented i

Parties ii

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Constitutional Provisions and Statutes 2

Statement of the Case 2

Reasons for Granting the Writ 5

The Summary Contempt Convictions are in Violation of U.S. Supreme Court precedent in Johnson v. Mississippi, 403 U.S. 212 (1971) 5

Section 18.2-456 (2) of the Virginia Code is Impermissibly Vague and is Overly Broad in Scope ... 5

Conclusions 7

TABLE OF AUTHORITIES

Cases:

Bouie v. Columbia, 378 U.S. 347(1964) 5

Craig v. Harney, 331 U.S. 367 (1947) 6

Harper v. Commonwealth, 85 S.E.2d 249 (1955) 6

Johnson v. Mississipi, 403 U.S. 212 (1971) 5, 6

Other Authorities:

U.S. Constitution
14th Amendment 5, 7

Virginia Code
Section 18.2-456 (2) 5

Petitioner, Jana Paugh, respectfully prays that this Court grant a writ of certiorari to review the final judgment of the Supreme Court of Virginia entered on March 9, 2007.

OPINIONS BELOW

The March 9, 2007, judgment of the Supreme Court of Virginia, which is not reported, denying a petition for rehearing, is set out in the Appendix, p. 9a. The January 4, 2007, judgment of the Supreme Court of Virginia, which is not reported, is set out in the Appendix, p. 1a. The August 18, 2006, judgment of the Court of Appeals of Virginia, which is not reported, denying a petition for rehearing, is set out in the Appendix, p. 8a. The June 20, 2006, per curiam decision of the Court of Appeals of Virginia, which is not reported, is set out in the Appendix, pp. 2a-3a. The October 31, 2005, judgment of the Arlington Circuit Court, which is not reported, is set out in the Appendix, p. 4a. The August 12, 2005, Order of the Arlington Juvenile and Domestic Relations Court, which is not reported, is set in the Appendix, pp. 5a-6a. The August 3, 2005, Order of the Arlington Juvenile and Domestic Relations Court, which is not reported, is set out in the Appendix, p. 7a.

JURISDICTION

The judgment of the Supreme Court of Virginia was entered on March 9, 2007. The jurisdiction of this court is invoked pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES

The 14th Amendment to the U.S. Constitution states in pertinent part that "nor shall any State deprive any person of life, liberty, or property without due process of law."

Section 18.2-456 (2) of the Virginia Code states in pertinent part that for "Cases in which courts and judges may punish summarily for contempt. (2) Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had or to be had in such court."

STATEMENT OF THE CASE

The Petitioner, Jana Paugh, is seeking review of criminal summary contempt convictions that arose out of a divorce proceeding. None of the words or conduct by Paugh occurred in the courtroom or in the presence of the Judge. This fact is undisputed.

On August 3, 2005, a hearing in regard to a protective order was held in the Juvenile and Domestic Relations court in Arlington County, Virginia. After the hearing had concluded and when Paugh was standing in the hallway to the elevator, she was pulled back into the courtroom by the bailiff. This resulted from an allegation by her former husband that while in the hallway she had violated the protective order. See, August 3, 2005, supplemental hearing transcript, page 3.

Paugh was immediately sentenced to 10 days in jail for summary contempt of court. The Judge did not convict Paugh for violating the protective order because she said it would have required a criminal warrant. The conviction for summary contempt of court was based upon what the Judge said her clerk had told her off the record and not under oath. See, August 3, 2005, supplemental hearing transcript, pages 3-7; and Order, Docket No. A-18803-01-02-L, entered August 4, 2005.

On August 11, 2005, Paugh went to the Clerk's office at the Arlington courthouse to file an appeal of the protective order and also the criminal summary contempt of court conviction. As Paugh was standing at the counter and preparing to hand the appeal papers to the clerk, Rebecca Masri, the attorney for her former husband came in. Masri asked Paugh what she was doing. Paugh told her that she was filing an appeal. Masri told Paugh that she could not do that because Masri needed to file her motion for reconsideration of the protective order before Paugh filed her appeal. Paugh told Masri in a sarcastic manner that she must know what she is talking about because she is such a "smart attorney." See, October 31, 2005, hearing transcript, pages 42-43.

Masri left the Clerk's office and returned with several Arlington County Sheriff's Deputies to arrest Paugh. They took Paugh into the Juvenile and Domestic Relations courtroom.

The Judge immediately convicted Paugh and sentenced her to 10 days in jail for summary contempt of court for purportedly making a "threat" in the Clerk's office against Masri as an officer of the court. See, Order, Docket No. A-18803-01-03-L, entered August 12, 2005. The Order stated that Paugh had made a"threat" against Masri. It did not use the term "threat of violence."

Paugh appealed the summary contempt of court convictions to the Arlington Circuit Court. On October 31, 2005, a trial "de novo" was held. The convictions were upheld.

The convictions were based upon the testimony of Masri. She alleged that the "threat of violence" by Paugh was telling her that she is "good" and that she is "going to get what is coming to her." Masri admitted that she considered Paugh's comments that she was "good" to be sarcastic and admitted that she saw Paugh make no threatening physical gestures toward her. See, October 31, 2005, hearing transcript, pages 36-37, 43-44, 46.

Paugh raised Federal Constitutional issues in the questions presented and assignments of error in her appeal brief to the Virginia Court of Appeals and then in her appeal brief to the Virginia Supreme Court. These Courts ruled that Paugh did not properly raise Federal Constitutional issues at the local court level.

REASONS FOR GRANTING THE WRIT

(a) The Summary Contempt Convictions are in Violation of U.S. Supreme Court Precedent in Johnson v. Mississippi, 403 U.S. 212 (1971).

The summary contempt of court of which Paugh was convicted did not occur in the presence of the Judge or in the courtroom. This fact is not in dispute.

Under Johnson v. Mississippi, 403 U.S. 212, 215 (1971), a summary contempt conviction is not in accordance with law where the alleged contempt did not occur in the presence of the Judge or in the courtroom.

Accordingly, under the 14th Amendment to the U.S. Constitution, the convictions must be declared null and void and overturned. A conviction obtained in violation of the Constitution and "due process" of the law cannot be upheld.

(b) Section 18.2-456 (2) of the Virginia Code is Impermissibly Vague and is Overly Broad in Scope

A criminal statute is deemed impermissibly vague if it "fails to give a person of ordinary intelligence fair notice that his contemplated conducted is prohibited." Bouie v. Columbia, 378 U.S. 347, 351 (1964). Section 18.2-456 (2) of the Virginia Code as to summary contempt, which prohibits a "threat of violence," is impermissibly vague. Nowhere in the Virginia Code is "threat of violence" defined as to its elements, nor is there any case law in Virginia defining this crime. Thus, a person should not be held in summary contempt and convicted under this statute unless he knows what is required or prohibited. This is particularly so

where the Judge did not personally observe the conduct or words that formed the basis for the summary criminal conviction.

A reasonable objective person would assume that a "threat of violence" is the same as criminal "assault." Under Virginia law, a criminal "assault" requires some overt physical act and the ability to inflict unwanted force or imminent bodily harm. But "no words whatever, be they ever so provoking, can ever amount to an assault." Harper v. Commonwealth, 196 Va. 723, 733, 85 S.E.2d 249, 255 (1955). Here, the only evidence of "threats of violence" are words with an ambiguous meaning.

Punishment for contempt is moreover not Constitutionally allowed unless there is a showing that the utterance created a "clear and present danger" or a "serious and imminent threat" to the administration of justice and to the person to whom the words were uttered. Craig v. Harney, 331 U.S. 367, 372-373 (1947). Here, there were no such claims by the Judge, the prosecutor, or the accuser of "clear and present danger" or "serious and imminent threat," only claims of words by Paugh with an ambiguous meaning.

The statute moreover is overly broad in scope and in conflict with Johnson v. Mississippi to the extent that it encompasses conduct outside the courtroom and outside the presence of the Judge.

CONCLUSIONS

For the above reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of Virginia. The summary criminal convictions for contempt of court are in violation of precedent of this Court and in violation of the 14th Amendment. The statute under which Paugh was convicted is impermissibly vague as to the elements of the crime and is overly broad in scope. Accordingly, the convictions must be overturned.

This the 7th day of June, 2007.

Respectfully submitted,

Stephen Thomas Yelverton
Yelverton Law Firm, P.L.L.C.
601 Pennsylvania Ave., N.W
Suite 900 South
Washington, D.C. 20004
Tel. 202-329-4200

Counsel for Petitioner

Admitted to U.S. Supreme Court Bar

APPENDIX

APPENDIX TABLE OF OPINIONS

Decision, January 4, 2007, Virginia Supreme Court, Paugh v. Commonwealth, Record No. 061912

Per Curiam, June 20, 2006, Virginia Court of Appeals, Paugh v. Commonwealth, Record No. 2927-05-4

Decision, October 31, 2005, Circuit Court of Arlington, Commonwealth v. Paugh, Nos. CR 05-1008 and CR 05-1009

Order, August 12, 2005, Arlington Juvenile and Domestic Relations Court, Commonwealth v. Paugh, Docket No. A-18803-01-03-L

Order, August 3, 2005, Arlington Juvenile and Domestic Relations Court, Commonwealth v. Paugh, Case No. JA018803-01-02

Rehearing, August 18, 2006, Virginia Court of Appeals, Paugh v. Commonwealth, Record No. 2927-05-4

Rehearing, March 9, 2007, Virginia Supreme Court, Paugh v. Commonwealth, Record No. 061912

VIRGINIA

In the Supreme Court of Virginia the 4th day of January 2007.

Jana Paugh, Appellant,

against Court of Appeals No. 2927-05-4

Commonwealth of Virginia, Appellee.

Order

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 4th day of January, is denied.

Teste:

Patricia L. Harrington,

By:

Deputy Clerk

VIRGINIA

In the Court of Appeals of Virginia on Tuesday the 20th day of June 2006.

Jana Paugh, Appellant,

against Record No. 2927-05-4
Circuit Court Nos. CR05-1008 and CR05-1009

Commonwealth of Virginia, Appellee.

From the Circuit Court of Arlington County

Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to code 171-407 (C), and is denied for the following reasons:

On appeal, appellant contends her summary contempt convictions are unconstitutional, constitutional infirmities attached to her circuit court hearing, Code 18.2-456 (c) is impermissibly vague, and the evidence presented was insufficient to convict her of summary contempt.

Appellant failed, however, to demonstrate that the questions she presents on appeal were preserved on the record. "No ruling of the trial court... will be considered as a basis for reversal unless the objection was stated together with the grounds therefore at the time of the ruling, except for good cause shown or to enable the Court of Appeals to attain the ends of justice." Rule 5A:18. Moreover, in a bench trial, at the conclusion of all the evidence, the defendant must make a motion to strike, present an appropriate argument in summation, or make a motion to set

aside the verdict, in order to preserve the question of the sufficiency of the evidence. See Howard v. Commonwealth, 21 Va. App. 473, 478, 465 S.E. 2d 142, 144 (1995).

Rule 5A:12 (c) provides that the "form and contents of the petition for appeal shall conform in all respects to the requirements of ...Rule 5A:20." This latter Rule requires the petition to contain "a clearand exact reference to the page(s) of the transcript...where each question was preserved in the trial court." Rule 5A:20(c).

Defendant did not preserve the questions she raised in her petition for appeal. Accordingly, Rule 5A:18 bars our consideration of these questions on appeal. Moreover, the record does not reflect any reason to invoke the good cause or ends of justice exceptions to Rule 5A:18.

This order is final for purposes of appeal unless, within fourteen days from the date of this order,there are further proceedings pursuant to Code 17.1-407 (D) and rule 5A:15(a), as the demand shall include a statement identifying how this order is in error.

The Commonwealth shall recover of the appellant the costs in the trial court.

This Court's records reflect that appellant is proceeding pro se in this matter.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk

VIRGINIA

In the Circuit Court of Arlington on
the 31st day of October, 2005.

Commonwealth of Virginia, Appellant

against Record No. 2927-05-4
Circuit Court Nos. CR05-1008 and CR05-1009

Jana Paugh, Appellee

From the Circuit Court of Arlington County
The court finds the defendant guilty.

VIRGINIA

IN THE ARLINGTON JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT

FOR THE SEVENTEENTH JUDICIAL DISTRICT

COMMONWEALTH OF VIRGINIA

VS

DOCKET NO. A-18803-01-03-L

JANA PAUGH

ORDER

This action came on to be heard this 11th day of August 2005, there being present the defendant, Jana Paugh; Rebecca Masri, Esq., and

The court finds that Rebecca Masri, Esquire and an officer of the court was present in the clerk's office filing a motion to be heard in this court and Jana Paugh approached Mrs. Masri and stated to her "You are going to get what is coming to you.", and that Mrs. Masri represents Jana Paugh's husband in a proceeding in this court and Circuit Court, and

It appearing to the court that the defendant is in Contempt of Court for threatening an officer of this court, Rebecca Masri, while she was attending his court to schedule a motion to re-consider to be heard in this court 18.2-456 (2);

ADJUDGED AND ORDERED that the defendant, Jana Paugh is hereby sentenced to ten (10) days in jail.

ENTERED THIS 12TH DAY OF AUGUST, 2005.

ESTHER WIGGINS LYLES, JUDGE

VIRGINIA

IN THE ARLINGTON JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT

COMMONWEALTH OF VIRGINIA

VS

Case No. JA018803-01-02

JANA PAUGH

ORDER

This action came on to be heard this 3rd day of August 2005, there being present the defendant, Jana Paugh; Rebecca Masri, Esq., and

Found in Contempt (18.2-456) for disobeying a court order not to have contact with Mr. Paugh: Defendant walks out of court and while with Ms. Laboy walked away from Ms. Laboy and approached Mr. Paugh and stated to "you are going to pay".

ADJUDGED AND ORDERED that the defendant, Jana Paugh is hereby sentenced to ten (10) days in jail.

Entered this 3rd DAY OF AUGUST, 2005.

ESTHER WIGGINS LYLES, JUDGE

VIRGINIA

In the Court of Appeals of Virginia on Friday the 18th day of August, 2006.

Jana Paugh, Appellant

against Record No. 2927-05-4
Circuit Court Nos. CR05-1008 and CR05-1009

Commonwealth of Virginia, Appellee.

From the Circuit Court of Arlington County

Before Judges Humphreys, Beales and Senior Judge Fitzpatrick

For the reasons previously stated in the order entered by this Court on June 20, 2006, the petition for appeal in this case hereby is denied.

This order shall be certified to the trial court.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 9th day of March, 2007.

Jana Paugh, Appellant

Against

Record No. 061912
Court of Appeals No. 2927-05-4

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 4th day of January, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: Original order signed by a deputy clerk of the Supreme Court of Virginia at the direction of the court

Deputy Clerk